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### Border rescue

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## Border Rescue

Abstract: Every year, thousands of refugees and other migrants die trying to cross borders. One way states can save lives is by undertaking rescue operations. This chapter asks whether receiving states have any special duty to do so. The idea of a “special duty” here can be brought out with the following question: do receiving states owe a duty to rescue migrants at borders that they do not owe all people in need? In answering this question, the chapter starts with an important yet easily overly looked point: crossing borders is not inherently dangerous. Migrants die crossing borders because receiving states restrict migration. This fact, in itself, does not mean that receiving states have a special duty to rescue, but it does mean they cannot claim that border deaths are nothing to do with them. The question we need to ask is whether receiving states bear *moral* responsibility for border deaths rather than merely *causal* responsibility. The chapter goes in search of, and finds, arguments for why receiving states are morally responsible. States cannot treat border deaths like any other misfortune without changing their immigration policies.

Keywords: refugees, migrants, immigration, ethics of immigration, duty to rescue, search and rescue, moral responsibility, James Pattison, Alexander Betts, Paul Collier.

Every year, thousands of refugees and other migrants die trying to cross borders. The dangers are many. Migrants die from exhaustion crossing deserts, freeze on mountain passes, drown at sea. One way states can save lives is by undertaking rescue operations. This chapter asks whether receiving states have any special duty to do so. The idea of a “special duty” here can be brought out with the following question: do receiving states owe a duty to rescue migrants at borders that they do not owe all people in need? In answering this question, the chapter starts with an important yet easily overly looked point: crossing borders is not inherently dangerous. Migrants die crossing borders because receiving states restrict migration. This fact, in itself, does not mean that receiving states have a special duty to rescue, but it does mean they cannot claim that border deaths are nothing to do with them. The question we need

to ask is whether receiving states bear *moral* responsibility for border deaths rather than merely *causal* responsibility. The chapter goes in search of, and finds, arguments for why receiving states are morally responsible. States cannot treat border deaths like any other misfortune without changing their immigration policies.

## 1. Special and General Duties to Rescue

In 2013, the Italian Navy, funded in part by the European Union, undertook Operation Mare Nostrum, aimed at rescuing migrants in the Mediterranean. It ended in 2015. What replaced it was Operation Triton, executed by the European Border and Coast Guard Agency (Frontex), aimed principally at border protection not rescue. Many human rights organizations decried this change. They argued that thousands would drown as a result.<sup>1</sup>

Are receiving states obliged to fund operations like Mare Nostrum? In a recent article, Eugenio Cusumano and James Pattison claim so.<sup>2</sup> They offer several arguments, but the simplest is humanitarian. States owe duties to assist people in need. Migrants at borders are people in need. Therefore, states must engage in border rescue.<sup>3</sup>

This argument seems plausible, but there is something striking it leaves out: reference to anything about migrants in particular. There are, after all, millions of people in need. Most are not migrants. The Cusumano and Pattison's humanitarian argument applies to them all. The other arguments offered – which refer to various ideas from the global justice literature – are no different in this respect. They show why migrants are among the millions to whom a general

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<sup>1</sup> For an excellent summary of events see C. Heller and L. Pezzani, 'Death by Rescue', *Forensic Architecture Agency*, (2016).

<sup>2</sup> E. Cusumano and J. Pattison, 'The Non-Governmental Provision of Search and Rescue in the Mediterranean and the Abdication of State Responsibility', *Cambridge Review of International Affairs*, 31, (2018).

<sup>3</sup> Cusumano and Pattison, 'The Non-Governmental Provision of Search and Rescue', 57-58.

duty to rescue is owed. They do not show that states owe a *special duty* to engage in border rescue.<sup>4</sup>

This article argues that states do owe a special duty to engage in border rescue. States owe this duty because they are causally and morally responsible for causing dangerous migration. States are causally responsible since they impose restrictions that make migration dangerous. They are morally responsible when they impose restrictions (1) in violation of a duty to admit and/or (2) unnecessarily. States would have to admit many more migrants before they could treat border deaths like any other misfortune.

In arguing for a special duty, I hope to do some work towards justifying the special concern that some activists and scholars (including Cusumano and Pattison) have shown for border rescue. In the absence of a special duty, this concern seems puzzling. Why pick out migrants ahead of anyone else in need? The idea of a special duty to engage in border rescue cannot entirely answer this question. Special duties are not absolute duties; there could be reasons to prioritize others in need all things considered. But if states owe special duties to engage in border rescue, we at least know there is more to weigh in their case than the mere opportunity to save lives.

Moreover, the reasons this article identifies as grounding a special duty are, I think, in line with many people's emotional reaction to this issue. There is a sense of anger; a sense that when bodies wash up on beaches or skeletons are found in the desert, something has seriously gone wrong with our immigration system. Migration should not be this dangerous. The fact that it is indicates a lack of respect for migrant lives. This article seeks to explain and justify this emotional reaction. People are right to be angry. Something has seriously gone wrong.

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<sup>4</sup> Cusumano and Pattison, 'The Non-Governmental Provision of Search and Rescue', 56-57. To be fair to Cusumano and Pattison, their main focus is not the grounding of a duty to rescue but the idea that governments must fulfil this duty rather than NGOs. I shall not address here the question of whether NGOs should be involved in rescue, nor the alarming trend towards criminalizing NGOs that are involved. While these are crucial issues, they fall beyond the scope of the paper.

States are morally responsible for dangerous migration. They are obliged to engage in border rescue to mitigate the damage they have caused.

The chapter has 10 sections. Section 2 refutes the argument that border rescue encourages dangerous migration. Sections 3 and 4 show that receiving states bear causal responsibility for border deaths and that migrants themselves cannot be blamed. Section 5 argues that receiving states are morally responsible for endangering migrants when states violate a duty to admit migrants safely. This leads to a discussion – sections 6-8 – over the breadth, grounding and demandingness of a duty to admit. Section 9 offers a further argument for why states may be morally responsible; one from unnecessary harm. Section 10 concludes by explaining why all states owe special duties to engage in border rescue, not just states at dangerous frontiers.

Before embarking, three preliminary points. First, it is important to distinguish a duty to engage in border rescue from a duty to admit. Satisfying the former involves merely rescuing migrants imperilled at borders. Satisfying the latter involves admitting migrants to a state's territory. When migrants are rescued they can subsequently be admitted by the state that rescues them, returned to where they came from or sent to some third country. The two duties are morally connected, as I shall argue below, but they are not identical.

Second, the duty a receiving state has to engage in border rescue is not necessarily a duty to rescue migrants at its own borders. Consider, again, the Mediterranean case. Cusumano and Pattison believe that the EU should have continued to fund sea rescue in the Mediterranean. But why the EU and why the Mediterranean? One could imagine an alternative system under which sea rescue was left entirely to the Mediterranean states. Conversely, one could imagine a system in which the EU chose to fund rescue elsewhere in the world; Malaysia-bound migrants in Andaman Sea, perhaps, rather than the EU-bound migrants in the Mediterranean. There is, in short, a question about *where* border rescue must take place; whether states must

rescue migrants at their own borders or whether they could (or should) do so elsewhere? Call this the Andaman question. We shall return to it in Section 10.

Finally, as can be discerned from the terminology used, the chapter focuses on all migrants at risk at the border not just refugees. But why this focus in a book on refugees? The answer is simple and controversial: I do not think there is anything ethically distinctive about refugees. There might be something ethically distinctive about migrants who are in need, but that category extends beyond the category of refugees, at least as “refugee” is conventionally defined. Indeed, challenging the idea that refugees are ethically distinct constitutes a further contribution of the chapter; see sections 4 and 6 below.

## 2. Border Rescue Does Not Cause Border Deaths

Before making the argument for border rescue, let me address a prominent objection: the claim that border rescue causes border deaths. This claim was advanced by the UK and German governments when seeking to justify *Mare Nostrum*’s termination. The logic is this. If migrants think they have a high chance of being rescued if they engage in dangerous migration, they are more likely to engage in dangerous migration. The more migrants that engage in dangerous migration, the more deaths.

The argument raises interesting ethical questions. It seems to assume that there is no reason to rescue migrants in current danger other than the more general reason of preventing deaths. This might be challenged. In analogous cases, such as drug overdose, people do think there is special reason to rescue those in current danger. Even if rescuing people from drug overdose encouraged more drug taking causing more deaths overall, few would endorse a policy of simply letting overdose victims die.

The real problem with the argument, however, is empirical. Border rescue does not increase border deaths; it reduces them.<sup>5</sup> The story of Mare Nostrum offers good evidence of this. When Mare Nostrum ended, the number of migrants did not decrease, but deaths rose dramatically. While 60 migrants drowned in the Mediterranean in the first four months of 2014, 1687 drowned in the first four months of 2015.<sup>6</sup> The dramatic increase in deaths led European Commission President Jean-Claude Juncker to admit, “It was a serious mistake to bring the Mare Nostrum operation to an end. It cost human lives”.<sup>7</sup>

Note, no one need deny that border rescue could have an incentive effect. Perhaps the danger of migration is one of the factors migrants consider when deciding whether to migrate.<sup>8</sup> Rather, the point is that border rescue, by definition, has a rescue effect. Border rescue saves a greater number of lives overall because the rescue effect swamps any incentive effect.

### 3. States Cause Border Deaths

Why do people die at borders? An initial thought one might have is that some border areas, such as seas and deserts, are naturally dangerous. No one can cross them without risk.

This answer is wrong, as is clear after a moment’s reflection. Modern transportation permits safe and secure journeys across all borders, whatever the natural environment. For anyone with a visa and a ticket, seas and deserts are no threat. One can take a ferry across the Mediterranean, from Turkey to Greece or Morocco to Spain. The journey is practically risk free. A trip from Mexico to the US - by coach or plane - is just as safe.

One’s next thought might be that safe travel is expensive. Migrants choose dangerous routes to save costs. Wrong again. Migrants pursuing dangerous migration almost invariably

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<sup>5</sup> Cusumano and Pattison, ‘The Non-Governmental Provision of Search and Rescue’, 64-65.

<sup>6</sup> Heller and Pezzani, ‘Death by Rescue’.

<sup>7</sup> Quoted in Heller and Pezzani, ‘Death by Rescue’.

<sup>8</sup> Although there are many others; see H. Crawley, et al., ‘Destination Europe? Understanding the Dynamics and Drivers of Mediterranean Migration in 2015’, *Unravelling the Mediterranean Migration Crisis (MEDMIG)*, (2016).

employ smugglers. Smugglers charge thousands; conventional transport companies do not. A migrant who has enough to migrate dangerously has more than enough for a regular ticket.

So why are borders dangerous? Because states make them dangerous. States deny certain people the visas they need to ride a conventional ferry, coach or plane. At the same time, states erect guards and razor wire in those places where crossing without authorisation would otherwise be easy and safe. The effect is that unauthorised migrants are forced out into hostile environments, resorting to unconventional and unsafe transport, as their only means of entry. The seas and deserts where migrants perish may be natural, but the policies that direct them there are not.<sup>9</sup>

That borders are not dangerous in themselves is obvious and yet frequently overlooked or understated. Cusumano and Pattison say almost nothing regarding it. Their analogy is with the famous example of a child accidentally drowning in a pond. That's the wrong analogy.<sup>10</sup> Or consider how refugee scholars Alexander Betts and Paul Collier in their book *Refuge* treat Mediterranean deaths. The villain of their book is Angela Merkel. They blame her for encouraging refugees to make dangerous journeys from Turkey to Greece by offering refuge to those who reached Germany. Betts and Collier say little as to what made these journeys dangerous except to note in passing that "the offer of refuge in Germany did not come with any legal means of getting there".<sup>11</sup> This is hardly a trivial detail. The deaths in the Mediterranean occurred because receiving states - including Germany, but not only Germany - prevented safe migration. In this context, singling out Merkel makes little sense. Why blame

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<sup>9</sup> W. A. Cornelius, 'Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy', 27, (2001); T. P. Spijkerboer, 'The Human Costs of Border Control', *European Journal of Migration and Law*, 9, (2007). Much the same point is made, with characteristic simplicity and style, by Hans Rosling in his video for the Gapminder Foundation, 'Why Boat Refugees Don't Fly!', (2015), <https://www.youtube.com/watch?v=Y00IRsfrPQ4>.

<sup>10</sup> Cusumano and Pattison, 'The Non-Governmental Provision of Search and Rescue', 57. Later, on page 60, Cusumano and Pattison do note that it is EU immigration rules that "ultimately force refugees to risk their lives to illegally enter". But given the importance of this point – and the fact that it applies to other states besides EU states and other migrants beside refugees – it is surprising how little they make of it.

<sup>11</sup> P. Collier and A. Betts, *Refuge* (Penguin, 2016), p. 108.



her for encouraging dangerous migration but not all receiving states for making migration dangerous in the first place?

Receiving states are causally responsible for border deaths.<sup>12</sup> This is the first point that goes to explain why they have a special duty to engage in border rescue. It does not, however, take us all the way. Further points must be established.

#### 4. Dangerous Migration as Forced Migration

One further point that needs to be established is that migrants embarking on dangerous migration are typically forced migrants. This point is important because it blocks one way by which receiving states might seek to deflect responsibility for dangerous migration: by blaming migrants themselves. If someone voluntarily runs headlong into my brick wall, I can hardly be held responsible for the harms they suffer. Likewise, if dangerous migration was entirely voluntary, it might seem inappropriate to blame receiving states. The argument that states are morally responsible for dangerous migration thus seems to depend on the claim that dangerous migration is forced or, if not entirely forced, then at least, short of voluntary.

Someone is forced to do something if she does it due to a lack of reasonable alternatives.<sup>13</sup> One can lack reasonable alternatives because other human beings have so conspired. Muggers, for instance, conspire to leave their victims with no reasonable alternative to relinquishing their valuables. One can also lack reasonable alternatives because of some natural misfortune. People have no reasonable alternatives to fleeing an erupting volcano. The volcano does not intend this effect – it does not intend anything – but that is the effect nonetheless.

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<sup>12</sup> Are *all* receiving states responsible? One might think that only states bordering dangerous frontiers, such as the Mediterranean, are implicated. One would be wrong; see Section 10.

<sup>13</sup> G. A. Cohen, 'The Structure of Proletarian Unfreedom', *Philosophy & Public Affairs*, 12, (1983); S. Olsaretti, 'Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness', *Journal of Political Philosophy*, 6, (1998).

Among migrants who are forced to migrate are those who meet the 1951 UN Convention definition of a refugee. The Convention defines refugees as people who are forced to migrate due to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”.<sup>14</sup> Convention definition refugees are forced to migrate because persecution leaves them with no reasonable alternative. Convention definition refugees are not the only forced migrants, however. People fleeing war, generalized violence and natural disasters also lack reasonable alternatives.

What about economic migrants, that is, people migrating to improve their economic circumstances? Economic migrants are sometimes contrasted with refugees on the assumption that they migrate voluntarily. It is true that some economic migrants do migrate voluntarily. The category is a broad one. It includes people who migrate to pursue further opportunities even though they enjoy decent conditions at home. But not all economic migrants migrate voluntarily. Some are forced to migrate to escape poverty so severe it threatens their access to food, medicine and other basic goods. A life of such severe poverty is not a reasonable alternative to migration.

We have established that many migrants are forced to migrate. But why think that those migrants who are undertaking dangerous migration fit this description? Two reasons. First, data. We know that migrants pursuing dangerous routes across the Mediterranean and US-Mexico tend to come from countries experiencing the problems identified above, particularly war, generalized violence and desperate poverty. In the case of US-Mexico, gang violence in Central America is a major threat.<sup>15</sup> In the case of the Mediterranean, large numbers come from war zones such as Syria and Afghanistan and poor countries such as Mali and Guinea.<sup>16</sup>

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<sup>14</sup> United Nations General Assembly, *Convention Relating to the Status of Refugees* (1951), Article 1 (A).

<sup>15</sup> S. Bermeo, ‘Violence drives immigration from Central America’, (2018), <https://www.brookings.edu/blog/future-development/2018/06/26/violence-drives-immigration-from-central-america/>.

<sup>16</sup> UNHCR, ‘Refugees Operational Data Portal: Mediterranean Situation’, (2018), <http://data2.unhcr.org/en/situations/mediterranean>.

Second, logic. People tend not to expose themselves to significant risk unless they are in a desperate situation.

The idea that dangerous migration is mostly forced migration will seem obvious to many, but it is nevertheless worth considering a few commonly made claims that might seem in tension with it. Let us consider three claims. All three appear in one book: *Refuge*, by Betts and Collier. The first is that migrants are typically better off than the people who stay home. After all, they are able to cross borders. Betts and Collier describe African migrants crossing the Mediterranean as “disproportionately risk-taking, namely young men and disproportionately affluent”.<sup>17</sup> Betts and Collier do not claim that this makes them voluntary migrants, but some might draw this inference. A second claim is that migrants pursuing dangerous migration often have other motivations besides desperation. For Betts and Collier, motivation is critical. For them, it lies at the “core” of the distinction between genuine refugees and voluntary migrants. While genuine refugees are “fleeing fear”, voluntary migrants “hope for honeypots”, that is, the wealth and opportunities available in rich countries.<sup>18</sup> A final claim is that people who migrate through “safe third countries” cannot be described as forced migrants. Betts and Collier make this claim about Syrians migrating to Europe through Turkey. Syrians are forced leave Syria, but in leaving Turkey they were “making an economic decision to migrate”.<sup>19</sup> They had effectively switched categories, from refugees to voluntary migrants.

Do these claims put pressure on the idea that dangerous migration is mostly forced migration? The first is simply irrelevant. Someone is forced to do something if they lack a reasonable alternative to doing it. Whether they are better off than others is immaterial. When I flee a burning building, I am forced to leave, though I am better off than anyone trapped inside. The second claim is also irrelevant. People can have multiple motivations for doing

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<sup>17</sup> Collier and Betts, *Refuge*, p. 68.

<sup>18</sup> Collier and Betts, *Refuge*, p. 30.

<sup>19</sup> Collier and Betts, *Refuge*, p. 199.

what they are forced to do. If you offer me \$1000 to leave a burning building, I have two motivations for leaving: to escape the fire and get the \$1000. Perhaps, I am a hopeful person and it is the \$1000 that is foremost in my mind as I flee. Still, I am forced to leave the building. Betts and Collier are wrong then to think that motivation is a good, let alone “core”, criterion for distinguishing forced from voluntary migrants. Forced migrants can be motivated by hope as well as fear.

What about the third claim: do migrants who travel through “safe third countries” become voluntary migrants? If life in a third country is reasonable alternative to onward migration, then yes, onward migration is voluntary. Indeed, the same would be true of people who never stepped foot in the safe third country but could have migrated there rather than their preferred destination. Dangerous migration to a preferred destination is voluntary whenever life somewhere else is a reasonable alternative.

The question we need to ask is, how often is life in a third country a reasonable alternative? In relation to some countries, the answer is clear. Take Libya, a country through which many migrants travel on their way to Europe. Libya is unsafe. Migrants are subject to detention, enslavement, rape and torture. Indeed, one of the most disturbing developments of recent years has been EU funding for the Libyan coastguard to intercept migrants despite knowing how migrants are subsequently treated.<sup>20</sup>

What about Turkey, the country Betts and Collier cite? Turkey is not Libya, but the situation there is still more complicated than Betts and Collier suggest. NGOs have accused Turkey of serious violations of refugee rights, including forced return.<sup>21</sup> Syrians in Greece have appealed in court against Turkey’s classification as a safe third country, sometimes with

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<sup>20</sup> M. Baldwin-Edwards and D. Lutterbeck, ‘Coping with the Libyan Migration Crisis’, *Journal of Ethnic and Migration Studies*, (2018); UNHCR, “Detained And Dehumanised” Report On Human Rights Abuses Against Migrants In Libya’, (2016).

<sup>21</sup> Amnesty International, ‘Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in Eu-Turkey Deal’, (2016), <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/>.

success.<sup>22</sup> So, matters are empirically complex. They are also philosophically complex. When people need to migrate to survive, then clearly they are clearly forced migrants. But what of cases in which people must migrate to escape severe hardships that do not threaten survival? Life in Turkey is hard for Syrians. The farcical nature of the work visa scheme effectively forces them into illegal work. The wages are low; the hours long. They are exploited and discriminated against.<sup>23</sup> They find it difficult to access basic services. Up to 40% of Syrian children remain out of school.<sup>24</sup> In such a context, there are, I think, two things one might say. One is that forced migration extends beyond cases of mere survival. Syrians leaving Turkey should be deemed forced migrants, even if they could stay in Turkey and survive. Life without legal employment, education for one's children and other such basic rights is, by itself, too high a cost to expect anyone to bear. The other thing one might say is that the dichotomy between forced and voluntary actions is too sharp. There are occasions in which someone does something that they might not be exactly forced to do but, given the pressures they are under, cannot be held entirely responsible for doing. We may, on such occasions, talk of partial responsibility.

In the Syrian case, I think the former view is correct: Syrians are forced to flee Turkey for reasons other than mere survival. But the latter view might prove apt in other cases. Were a migrant to bear partial responsibility for engaging in dangerous migration, receiving states would likely share responsibility for their plight.

One final point regarding forced migration. Everything I have said so far has concerned adult migrants, but not all migrants are adults. When children are dependent on their parents,

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<sup>22</sup> M. Gkliati, 'The Application of the EU-Turkey Agreement: A Critical Analysis of the Decisions of the Greek Appeals Committee', *European Journal of Legal Studies*, 10, (2017).

<sup>23</sup> F. Baban, S. Ilcan and K. Rygiel, 'Syrian Refugees in Turkey: Pathways to Precarity, Differential Inclusion, and Negotiated Citizenship Rights', *Journal of Ethnic and Migration Studies*, 43, (2017).

<sup>24</sup> B. Frelick, 'Syrian Refugee Kids Still Out of School in Turkey', (2017), <https://www.hrw.org/news/2017/01/23/syrian-refugee-kids-still-out-school-turkey>.

they lack a reasonable alternative to accompanying their parents. If parents migrate – voluntarily or involuntarily – their dependent children are forced to migrate with them.

## 5. Moral Responsibility as Duty Violation

We have shown that states share in causal responsibility for dangerous migration and that, since dangerous migration tends to be forced migration, few, if any, migrants can be held morally responsible for the dangers they face. Is this enough to show that states have a special duty to engage in border rescue? Some might think so, but I am sceptical.

Suppose a pedestrian accidentally pushes a stranger over in the street. At the same time, some other stranger falls over accidentally. The two strangers are an equal distance from the pedestrian and in equal need of her assistance. If you think that the pedestrian has a special duty to help the stranger she pushed over, then I have probably already said enough to convince you that receiving states have a special duty to engage in border rescue. Causal responsibility for harm triggers special duties; you break it, you fix it. But this is not my view. To my mind, the pedestrian owes nothing more to the stranger she pushes, than the second stranger who falls. What separates the two is merely physical, not moral.

If you agree with me that causal responsibility is insufficient to trigger special duties to assist, then more needs to be said to show that receiving states have special duties to engage in border rescue. We need to ask why receiving states bear moral, and not merely causal, responsibility for dangerous migration.

The first answer I wish to pursue is that receiving states can become morally responsible for dangerous migration by violating duties to admit. If states owe duties to admit, migrants should be allowed to migrate freely. If states instead impose restrictions, they wrongfully endanger migrants. Having wrongfully endangered migrants, states must seek to mitigate the damage by engaging in border rescue.

Duty violation, then, is one way states can incur a special duty to engage in border rescue. But now we need to ask, when do states owe duties to admit migrants? The question can be broken into three further questions: (1) Which migrants have a claim for admittance? (2) Why do these migrants have a claim for admittance? (3) Under which circumstances are states required to meet those claims? The first question is about the breadth of the duty; the second about grounding and the third about demandingness.

#### 6. Breadth: Why All Migrants in Need Have a Claim to Admittance

When it comes to breadth, there are at least four plausible answers as to who has a claim to admittance:

- (A) Convention definition refugees.
- (B) Migrants whose basic needs *cannot* be alleviated without admission.
- (C) Migrants whose basic needs *will not* be alleviated without admission.
- (D) All migrants.

My view is (D). Everyone has a human right to immigrate whether or not they are in need. I have presented the argument for that view in other work.<sup>25</sup> I will not do so here. Instead, I shall defend (C). Wherever one stands on the question of whether there is a human right to immigrate, all should agree that some migrants have particularly pressing claims for admission. The task here is to show that the people who have particularly strong claims are all who fit under description (C) rather than (A) or (B). Indeed, defending duties of admission only to (A) or (B) is bound to fail. Logic forces us from (A) through to (C).

Let us start then with (A). Convention definition refugees are at risk of persecution. It seems clear that they have a claim to admission, but why? The most compelling answer is the

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<sup>25</sup> K. Oberman, 'Immigration as a Human Right', in Sarah Fine and Lea Ypi, eds., *Migration in Political Theory: The Ethics of Movement and Membership*, (Oxford: Oxford University Press, 2016).

most obvious: they are in need of admission. The problem is that there are many others in need of admission as well. Think, for instance, of the people referred to in Section 4: people fleeing war, generalized violence, natural disasters and poverty.

There are several ways defenders of (A) might respond to this point. One is to deny that need is the sole basis for refugee admittance. Perhaps a further grounds is the opportunity to condemn persecuting states. When receiving states admit refugees, they acknowledge the persecution the refugees have suffered. In acknowledging the persecution, they condemn the persecutors.<sup>26</sup>

This response fails. It might be true that condemning persecution is of inherent value, but whatever value it has pales in comparison to the value of safeguarding those in need. If one could either express condemnation of persecution by admitting one refugee or saving more lives by admitting other migrants then, all else being equal, one should admit the other migrants.

To this, it might be said that the value of expressing condemnation is not inherent but instrumental: it induces repressive regimes to change.<sup>27</sup> This instrumental argument, while interesting, rests on a questionable empirical hypothesis. We have no reason to accept that hypothesis without evidence. Admitting convention definition refugees may have little or no effect in changing regime behaviour. It may even prove counterproductive, allowing repressive regimes to rid themselves of opposition forces and/or use the threat of refugee flows to exert power over receiving states.<sup>28</sup> Moreover, if we are to take instrumental considerations into account, then we should do so for all migrant categories. The instrumental benefits of admitting poor migrants, for instance, in increasing remittances and reducing poverty, must be allowed to weigh in their favour.

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<sup>26</sup> M. E. Price, *Rethinking Asylum: History, Purpose and Limits* (Cambridge: Cambridge University Press, 2009).

<sup>27</sup> Price, *Rethinking Asylum*, pp. 69-85.

<sup>28</sup> K. M. Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy* (Ithaca, N.Y.: Cornell University Press, 2010).



An approach that seeks to downplay need alleviation is, to my mind, a non-starter. Let us consider another tack. Some defenders of (A) have argue that, while need alleviation is what we ultimately care about, convention definition refugees are distinct because their needs cannot be alleviated without admission. Other migrants, the argument goes, can be assisted *in situ*. Poor migrants, for instance, can be assisted by means of aid, trade or investment.<sup>29</sup>

The first thing to note about this second response is that it cannot defend (A). The distinction between convention definition refugees and other migrants does not track the distinction between those whose needs can and cannot be alleviated by other means. It is not true that convention definition refugees can never be assisted by other means. Some refugees can be safeguarded against persecution if effective diplomatic or military action is taken. It is also not true that other migrants can always be assisted by other means. In some cases, problems such as violence and corruption render outside help impossible. The category “those whose basic needs cannot be alleviated without admission” is a distinct category to that of convention definition refugees; a point that some, adopting this line of argument, have been wise to concede.<sup>30</sup> We have moved, in other words, from (A) to (B).

But (B) is also unacceptable. There is no reason to admit those whose needs *cannot* be alleviated without admission over those whose needs *will not* be alleviated without admission. What matters is whether people’s needs are alleviated, not whether they could be in theory. A receiving state cannot justify excluding poor migrants on the mere grounds that it *could* assist them in their home country by means of aid, trade or investment. If that aid, trade and investment is not forthcoming, the migrants have an equal claim to admission as anyone in equal need.

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<sup>29</sup> M. Lister, ‘Who are Refugees?’, *Law and Philosophy*, 32, (2013); M. Cherem, ‘Refugee Rights: Against Expanding the Definition of a “Refugee” and Unilateral Protection Elsewhere’, *Journal of Political Philosophy*, 24, (2016).

<sup>30</sup> D. Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Harvard University Press, 2016), pp. 82-83.

To see the implausibility of (B), imagine an analogous healthcare policy. The policy distinguishes patients who require hospital admission from those who could be treated at home. Home treatment is never actually provided but patients who could be treated from home are, nevertheless, excluded from hospitals. Such a healthcare policy is clearly ludicrous. An immigration policy based on (B) is no less so.<sup>31</sup>

This then is how we move from (A) to (C). In so doing we have addressed the question of breadth. All migrants in need have a claim to admittance if their needs will not otherwise be alleviated.

One last issue. If (C) is the right answer, should we not expand the definition of a “refugee” accordingly? Should “refugee” be defined as a migrant whose basic needs will not be alleviated without admission? I have no answer to this question. I raise it only to forestall confusion. The normative question of who has a claim for admittance is often addressed alongside the conceptual question of who is a “refugee”. But this has been a mistake. It has encouraged people to think the two questions are identical. They are not. There may be good non-normative reasons – historical or linguistic perhaps – for maintaining the Convention definition, but such reasons have no place in an answer to the normative question. In what follows, I shall refer to “migrants in need” to mean (C) and leave it to others to judge whether that group warrant description as “refugees”.

## 7. Grounding: Dangerous Migration as a Further Grounds for a Duty to Admit

In addressing the breadth question, we have already done much to address the grounding question. The primary reason why states owe duties to admit migrants in need is to enable them to alleviate those needs. There is, however, a further reason why states owe duties

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<sup>31</sup> For further debate on this issue see K. Oberman, ‘Reality for Realists: Why Economic Migrants Should Not Just ‘Go Home and Wait for Assistance’’, *European Political Science*, (2017) and D. Miller, ‘A Response to Song, Stilz and Oberman’, *European Political Science*, (2017).

to admit: to avoid dangerous migration. If states prevent migrants in need from migrating legally, some will attempt to migrate dangerously. By permitting migration, states make migration safe.

One might think this second grounds redundant. If states already owe duties to admit migrants in need, because they are in need, what work is done by noting that admission also prevents dangerous migration? In some cases, it is true, this second grounds will prove redundant, but not in all. Imagine the following: receiving state R receives migrants from two sending states, S1 and S2. Migrants from both states are in great need but, before they migrate, migrants from S1 are in moderately more need. If other things were equal, R would have reason to prioritise the admission of S1 migrants. Other things are not equal, however. R can maintain a firm border against S1 but not S2. If S1 migrants are excluded, they stay home. If S2 migrants are excluded, they attempt dangerous migration. Suppose, once the costs of dangerous migration are included, the citizens of S2 are, on average, at greater risk than the citizens of S1. R would then have reason, all things considered, to prioritise the admission of S2 migrants.

This is a stylised example, but the lesson to draw from it is that the two reasons to admit migrants in need can come apart. Preventing dangerous migration is a further grounds for a duty to admit migrants in need and it is not always redundant.

#### 8. Demandingness: Admitting Migrants is not Costly

The question of demandingness is not settled by breadth nor grounding. States may owe duties to admit migrants in need but these duties are limited by cost. When the costs of admittance rise beyond a certain threshold, states have no duty to admit more.

I will not debate where the cost threshold lies. There is already work on that issue. The point I wish to make here is instead that wherever the threshold lies, states will likely be obliged

to admit large numbers of migrants. This is for a simple empirical point: admitting migrants is often not costly.

That migration is often not costly is a point that is routinely ignored. Consider the story of a recent draft report, commissioned by the Trump administration, into the fiscal cost of refugee admissions. The administration was intent on restricting admissions. No doubt, it commissioned the report with the hope of justifying that decision. What did the report find? That refugees, over a ten-year period, make a net-contribution of \$63 billion.<sup>32</sup> Perhaps this should not have been surprising. Migrants work and pay taxes; they are not passive consumers of state benefits.

The draft report was never published. We only have it because it was leaked to the New York Times. Clearly it was an embarrassment. It suggested that in restricting admissions, the US government would miss an opportunity to both save lives *and* make itself richer.<sup>33</sup>

Now the report only concerned the *fiscal* effects of *refugee* admission, but when we look at the broad *economic* effects of *migration in general* we find similar results. Migration – high skilled and low skilled – benefits receiving state economies. The debate among migration economists is not whether migration has this effect, but how large the benefit is.<sup>34</sup>

We might still worry about distribution. Migration can benefit society overall and still leave poorer citizens worse off (Borjas (1999)). But even if migration does have a negative effect on those at the bottom of the labour market, that problem can be addressed by domestic transfers. It is unnecessary to restrict migration.

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<sup>32</sup> Department of Health and Human Services, ‘The Fiscal Costs of the US Refugee Admissions Program at the Federal, State and Local Levels, from 2005-2014’, (2017), <https://www.nytimes.com/interactive/2017/09/19/us/politics/document-Refugee-Report.html>.

<sup>33</sup> I thank Serena Parehk for alerting me to this story. Discussion with her, and Patti Lenard, inspired this section.

<sup>34</sup> E. Boubtane, J. C. Dumont and C. Rault, ‘Immigration and Economic Growth in the OECD Countries 1986–2006’, *Oxford Economic Papers*, 68, (2016); G. J. Borjas, ‘The Economic Benefits from Immigration’, *Journal of Economic Perspectives*, 9, (1995).

What about other kinds of costs besides economic costs? Is it not relevant, for instance, that many citizens prefer low immigration? Should we not add these “subjective costs” to objective costs when determining the extend of the duty to admit? Actually, no. For we must ask what explains citizen preferences. One possibility is very little. They are *mere* preferences, much like preferences for, say, tea over coffee. If so, they are too insignificant to deserve inclusion. Receiving states can only exclude migrants in need if they have a good reason for doing so. A mere preference for having fewer immigrants around does not cut it. (Compare: “Don’t haul him into the life boat. I like the sense of space”). The greater danger, however, is that opposition to immigration is not a mere preference but grounded in either ignorance and prejudice. We know people poorly grasp the effects of immigration, tending to exaggerate or entirely invent the costs and underestimate the benefits.<sup>35</sup> We also know that opposition to immigration correlates with prejudicial attitudes either towards particular ethnicities<sup>36</sup> or outgroups in general.<sup>37</sup> Given this evidence, we should be slow to include “subjective costs” in our calculations. The duty to admit cannot limited by ignorance or prejudice.

This is not to argue that the cost threshold will never be reached. There are, no doubt, important non-economic objective costs, such as environmental degradation, and the economic gains cannot go on indefinitely. At some stage, migration will have significant net-costs. My point is merely that, given the benefits, states will likely be obliged to admit large numbers no matter how high or low we place the cost threshold. In a world in which admitting migrations produces either net-gains or low net-costs, even a seemingly undemanding duty to admit will yields radical results.

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<sup>35</sup> For some nice examples of the perception/evidence mismatch see J. Hidalgo, ‘The Case for the International Governance of Immigration’, *International Theory*, 8, (2016).

<sup>36</sup> R. Ford, ‘Acceptable and Unacceptable Immigrants: How Opposition to Immigration in Britain is Affected by Migrants’ Region of Origin’, *Journal of Ethnic and Migration Studies*, 37, (2011); J. W. Ayers, et al., ‘Is Immigration a Racial Issue? Anglo Attitudes on Immigration Policies in a Border County’, *Social Science Quarterly*, 90, (2009).

<sup>37</sup> D. R. Kinder and C. D. Kam, *Us Against Them: Ethnocentric Foundations of American Opinion* (Chicago: University of Chicago Press, 2010), pp. 125-150.

## 9. Moral Responsibility as Unnecessary Harm

Having offered some thoughts on the breadth, source and demandingness of the duty to admit, let me repeat the general argument. The general argument is this: when states fail to admit migrants that they have a duty to admit and this causes dangerous migration, states are morally responsible for dangerous migration. Because they are morally responsible for dangerous migration, they owe a special duty to engage in border rescue.

But now suppose a state has discharged its duty to admit. Would it cease to have a special duty to engage in border rescue? Not necessarily. While violating a duty to admit is one way a state can become morally responsible for dangerous migration, there might be others.

Consider this: if a state has alleviated its duty to admit, then it is permitted to impose restrictions, but the permission to impose restrictions is not a requirement to do so. If a state is permitted but not required to impose restrictions, then it is permitted *not* to impose restrictions. If the state nevertheless chooses to do so, it endangers migrants by denying them a reasonable alternative to dangerous migration. This is a form of unnecessary endangerment. It seems plausible that states can have special duties towards those they unnecessarily endanger.

To understand this argument better, consider a set of analogous examples involving (once again) a street collision.

*Push 1:* Pedestrian pushes Stranger without justification. Pedestrian is required not to push Stranger.

*Push 2:* Pedestrian's daughter is in danger. To save her, Pedestrian must run across the street. Doing so involves pushing Stranger. Pedestrian is required to save her daughter so she is required to push Stranger.

*Push 3*: Pedestrian's wallet is stolen. Pedestrian is permitted but not required to chase the thief. Doing so involves pushing Stranger. If pedestrian is permitted but not required to chase the thief, she is permitted but not required to push Stranger.

In which of these cases does Pedestrian have a special duty to assist Stranger? *Push 1* is analogous to those cases, discussed at length, in which states violate a duty to admit. Duty violation is certainly grounds for a special duty to assist. *Push 2* is tricky, but my view is that Pedestrian has no *special* duty to assist Stranger in this case. The harm Pedestrian causes Stranger is morally necessary. She is thus casually but not morally responsible for Stranger's injuries. It is like our first case, in Section 5, involving an accidental collision. No doubt some will disagree with this judgement, but if so they should certainly agree with me in relation to *Push 3*. In *Push 3*, morality did not require Pedestrian to push Stranger but only permitted her to do so. Since Pedestrian nevertheless chose to push Stranger, I think she has special duty to assist Stranger. She is morally responsible for Stranger's injuries because she harmed her unnecessarily.

Now, for unnecessary harm to be a further grounds for a special duty to engage in border rescue there has to be cases like *Push 3*. States must be, at least sometimes, permitted but not required to impose migration restrictions against migrants in need. While I will not assess here whether this is in fact so, the possibility of "discretionary admissions" is consistent with most accounts of refugee and migration ethics. It seems particularly plausible if one assumes that the duty to admit is not especially demanding.

A different challenge: if a state lacks a duty to admit migrants in need, why would it have a duty to engage in border rescue? If admission is too costly, would not border rescue also be too costly? Not necessarily. Admission and border rescue may impose different kinds of cost. Consider one of the costs referred to above: environmental costs. A state might be

permitted to exclude to prevent environmental costs, but these environmental costs would not permit a failure to engage in border rescue.

#### 10. The Andaman Question and the Moral Importance of Aeroplanes

Let us turn finally to the Andaman question: the question of whether states owe duties to rescue migrants at their borders in particular. The arguments that Cusumano and Pattison offer for a duty to engage in border rescue offer no reason to think so. As we have noted, their arguments support a general duty to rescue and a general duty to rescue does not distinguish migrants from others in need, much less migrants in a particular location.

At first glance, one might think that this article delivers the opposite conclusion. The argument that I have offered is from state responsibility for dangerous migration and one might think that only receiving states at dangerous frontiers, such as US/Mexico, the Andaman and the Mediterranean, are responsible for dangerous migration. After all, when migrants are imperilled, they are trying to avoid restrictions imposed by these frontier states: the US, Malaysia, Italy, Greece and so forth. Canada, Germany and other states that lie beyond the frontier might seem to avoid responsibility.

In fact, the responsibility argument I have offered also implicates non-frontier states. One reason for this is that non-frontiers states can play a critical role in setting and enforcing restrictions at the frontier. The EU offers a clear example; Mediterranean restrictions are the product of decisions made in Berlin and Brussels as much as in Rome or Athens. But there is a more basic reason why non-frontier states are implicated: aeroplanes. Aeroplanes offer safe transport to all states in the world. If non-frontier states capable of hosting migrants would allow migrants to migrate by plane, those migrants would have a reasonable alternative to dangerous migration. They would not have to cross the Mediterranean, the Andaman, the Sonora or some other dangerous frontier. The problem is non-frontier states routinely deny



migrants the visas they need to fly to and settle within their territory. A migrant who lacks a reasonable alternative to dangerous migration is therefore forced to migrate by *all* receiving states that are capable but unwilling to host her, not just the frontier state to which she flees. Since all receiving states are in the exclusion game, all receiving states share responsibility for dangerous migration.<sup>38</sup>

Now, there might be contingent reasons why duties to rescue should fall on the nearest states. That is the legal convention and one that fits well with norms concerning sovereignty.<sup>39</sup> So perhaps local rescue can be justified on the basis of these contingent reasons. Still, it is striking that there is no deep moral reason for doing things this way. Many migrants imperilled in the Andaman would have flown to EU countries instead but for EU restrictions. Absent convention, there is no reason why the EU should rescue migrants in the Mediterranean ahead of these Andaman-imperilled migrants. To some, this might seem like an odd result, but, on reflection, I am not sure it is. States have special duties to engage in border rescue if they are morally responsible for leaving migrants with no reasonable alternative to dangerous migration. To avoid this duty, they should admit more migrants. If they fail to do so, it is not odd to think that they have a special duty to rescue all those they have failed. On the contrary, it would be odd if states only had duties to rescue those migrants at their borders and not those further away.

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<sup>38</sup> Which is not to say that all receiving states are responsible for *every* case of dangerous migration. Admittedly, there will be some cases in which particular migrants cannot safely migrate to particular states for reasons outside of those states' control.

<sup>39</sup> On legal convention, see Cusumano and Pattison, 'The Non-Governmental Provision of Search and Rescue', 58.

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